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90-1904

The Supreme Court of the United States

OCTOBER, 1990 TERM

Supreme Court, U.S.
FILED
JUN 13 1991
OFFICE OF THE CLERK

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

—v—

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, THE COMMISSION OF LA COSA NOSTRA; ANTHONY SALERNO, also known as Fat Tony; MATTHEW IANNIELLO, also known as Matty the Horse; ANTHONY PROVENZANO, also known as Tony Pro; NUNZIO PROVENZANO, also known as Nunzi Pro; ANTHONY CORALLO, also known as Tony Ducks; SALVATORE SANTORO; CHRISTOPHER FURNARI, SR., also known as Christie Tick; FRANK MANZO; CARMINE PERSICO, also known as Junior, also known as The Snake; GENNARO LANGELLA, also known as Gerry Lang; PHILIP RASTELLI, also known as Rusty; NICHOLAS MARANGELLO, also known as Nicky Glasses; JOSEPH MASSINO, also known as Joey Messina; ANTHONY FICAROTTA, also known as Figgy; EUGENE BOFFA, SR.; FRANCIS SHEERAN; MILTON ROCKMAN, also known as Maishe; JOHN TRONOLONE, also known as Peanuts; JOSEPH JOHN AIUPPA, also known as Joey O'Brien, also known as Joe Doves, also known as Joey Aiuppa; JOHN PHILLIP CERONE, also known as Jackie the Lackie,

(Continued on inside front cover)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Defendants,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Defendant-Petitioner,

BARRY FEINSTEIN, CARROLL HAYNES, FRANK J. SCARPINA-TO, MELANIO CUEBAS, LOUIS PARTENZA, RALPH PROSSIMO, WILLIAM BROWN, JAMES BROCKWELL, PATRICIA WILLIAMS, CARMINE CHIOCCARICLIO, HOWARD FORSTER, DAN ZAMBANINI, LEROY FLEMING, WAYNE CRUZ, RUTH WILKERSON, LAWRENCE PODAIR, TODD RUBINSTEIN, EDDIE CULLEN, NAR-CISSUS BRINSON, RUBY THOMAS, ALFRED KING, ARNETHIA MELVIN, JOHN P. MORRIS, JOSEPH L. YEOMAN, JAMES E. SMITH, DANIEL J. MCGINLEY, PETER COYLE, JOSEPH SULLIVAN, JOSEPH M. LYONS, JAMES R. BROCKWELL, WILLIAM R. HILL, WILLIAM NOLAN, JAMES BRENNAN, BRIAN MCDONALD, LARRY A. THOMAS, ERNIE HARRIS, JOSEPH BROCK, SR., JOHN R. MULLER, ROBERT OETTL, JOHN SHIELDS, LEWIS RICE, ROBERT J. EWANCO, TERRY HUNTER, VERNON RHODES, RICH POTOCHNEY, JOSEPH P. SANTONE, JOHN CRISTINA, WILLIAM C. JOHNSTON, RICHARD GLASS, DOUGLAS CAMPBELL, PAUL H. KNOLLINGER, JR., WILLIAM SIMMONS, SR., HAROLD WOLCHOK, LANGSTON MCKAY, WALTER CAHILL, ROBERT OTTMAN MARIO ABREGO, JOHN BURKE, VICTOR C. OLIVADOTI, TERENCE MAJKA, JOHN AMADIO, FRANK CRAMER, ANTHONY DEBELLA, RAY HILLIARD,

Intervenors.

QUESTIONS PRESENTED

1. Did the court of appeals err when it affirmed the District Court Order which effectively grants the Government control of the IBT in perpetuity?

   a. Did the court of appeals err when it affirmed the District Court Order which declared that paragraph L.17 of the Consent Decree, which requires Government approval of changes to the IBT Constitution, is a permanent amendment to the IBT Constitution regardless of the vote of the delegates at the Convention.

   b. Did the court of appeals err when it affirmed the District Court Order making all other amendments contained in the Consent Decree permanent amendments to the IBT Constitution.

   c. Did the court of appeals err when it affirmed the injunction issued by the district court, the effect of

which is to require the delegates to the Convention to vote on the amendments contained in the Consent Decree while at the same time declaring that vote meaningless.

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CONSTITUTION

U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATUTES

18 U.S.C. §1964:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as

the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter [18 USCS §§1961 et seq.] shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

28 U.S.C. §1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

29 U.S.C. §411:

(a) (1) Equal rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly. Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor

organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

PARTIES TO THE PROCEEDING

Defendant-Petitioner:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO

Plaintiff-Respondent:

United States of America

Intervenors:

Barry Feinstein, Carroll Haynes, Frank J. Scarpina-To, Melanio Cuebas, Louis Partenza, Ralph Prossimo, William Brown, James Brockwell, Patricia Williams, Carmine Chioccariclio, Howard Forster, Dan Zambanini, Leroy Fleming, Wayne Cruz, Ruth Wilkerson, Lawrence Podair, Todd Rubinstein, Eddie Cullen, Nar-Cissus Brinson, Ruby Thomas, Alfred King, Arnethia Melvin, John P. Morris, Joseph L. Yeoman, James E. Smith, Daniel J. McGinley, Peter Coyle, Joseph Sullivan, Joseph M. Lyons, James R. Brockwell, William R. Hill, William Nolan, James Brennan,

Brian McDonald, Larry A. Thomas, Ernie Harris, Joseph Brock, Sr., John R. Muller, Robert Oettl, John Shields, Lewis Rice, Robert J. Ewanco, Terry Hunter, Vernon Rhodes, Rich Potochney, Joseph P. Santone, John Cristina, William C. Johnston, Richard Glass, Douglas Campbell, Paul H. Knollinger, Jr., William Simmons, Sr., Harold Wolchok, Langston Mckay, Walter Cahill, Robert Ottman, Mario Abrego, John Burke, Victor C. Olivadoti, Terence Majaka, John Amadio, Frank Cramer, Anthony Debella, and Ray Hilliard.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

On June 7, 1991 the United States Court of Appeals for the Second Circuit heard argument on the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("IBT's") appeal from the district court's May 6,

1991 Opinion and Order as amended by a May 7, 1991 Order of the District Court (hereinafter the "District Court Order").

The court of appeals entered judgment affirming the District Court Order the afternoon of June 7, 1991.

The IBT submits this Petition for a Writ of Certiorari to review a decision of the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. §1254. This case is appropriate for Supreme Court review because the order of the district court affirmed by the court of appeals grants the United States of America (the "Government") permanent control of the IBT, disenfranchising the union's 1.7 million members without ever allowing the

membership, through its democratically elected delegates to vote on the Government's control.

STATEMENT OF THE CASE

The IBT is the largest trade union in the United States. There are 1.7 million voting members in the IBT, a number larger than the voting population of 26 states. The IBT has 660 locals. United States v. International Broth. of Teamsters, 723 F.Supp. 203, 208 (S.D.N.Y. 1989).

The Government commenced this action against the IBT, its General Executive Board (the "GEB"), the Commission of La Cosa Nostra and others under the provisions

of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 USC §1964. On March 14, 1989 prior to trial, the Government and the GEB, individually and on behalf of the IBT, entered into a consent decree which was entered as an order of the district court that same day (the "Consent Decree").[1]

The Consent Decree is comprehensive. It provides for three administrative officers: an elections officer to implement election rules and to supervise the 1991 IBT elections; an investigations officer to investigate wrongdoing and to

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[1] The Consent Decree is reproduced at A. 55-107.

file charges against union officials or organizations when appropriate; and an independent administrator with powers co-terminous with those of the General President and the GEB. It provides for a three step election procedure culminating in a direct rank-and-file election of officers and provides for the appointment of an Independent Review Board after certification of the election in 1992. Following the provisions pertaining to each of these subjects appears the phrase "the delegates shall be presented with the aforesaid amendments for vote." (A. 83, 97.)

1. The Government's Motion.

On February 22, 1991, the Government filed a Notice of Motion together with a

supporting Declaration (Declaration of Edward T. Ferguson, III, hereinafter cited "Ferguson Dec.") asking the court to declare "that the Consent Decree's three-stage procedure for election of IBT International Union Officers cannot be changed except in accordance with the Consent Decree's future practices provision, and [to] enjoin[ ] any attempt to change that electoral procedure by any other means." (Ferguson Dec., ¶2, p.2.)

In support of its motion, the Government alleged there were "plans at the highest echelon of the IBT to amend the IBT Constitution to convert the June Nominating Convention into an Election Convention and thereby scuttle the December rank-and-file

vote." (Ferguson Dec., ¶19, p.15.) The IBT opposed the motion, in part on the ground that the Government had not alleged sufficient facts to warrant the relief requested. (Memorandum of IBT in Opposition to Plaintiff's Motion for Declaratory and Injunctive Relief; Supplemental Memorandum of IBT in Opposition to Plaintiff's Motion for Declaratory and Injunctive Relief.) Additionally, the IBT submitted the statement of IBT General President William McCarthy indicating his intent to "support the adoption of the Consent Order at the Convention". International Teamster, p.1. This statement was offered to indicate not only the General President's support for

the Consent Decree, but also to evince that the IBT was unaware of any expressed plan among GEB members to scuttle the Consent Decree.

2. The March 20, 1991 Hearing.

The district court held a hearing on the Government's motion on March 20, 1991.[2] At that hearing, the court stated that it was treating the Government's motion, insofar as it sought declaratory relief, as an application for interpretation of certain provisions of the Consent

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2 The transcript of the March 20, 1991 hearing is reproduced at A. 128-199.

Decree, pursuant to Paragraph K.16 of the Consent Decree. (A. 134.)

The Government stated that, pursuant to Paragraphs D.9.(b) and F.12.D of the Consent Decree, the Convention delegates will have the right to vote their approval or disapproval of the Consent Decree's amendments to the IBT Constitution. (A. 179.) The Government further stated that, should the delegates vote to disapprove those amendments, then Government representatives would be present at the Convention to consider, pursuant to the Consent Decree's "Future Practices" provision (A. 101-102.), any alternative electoral procedure proposed. (A. 179.) The Government argued that the "Future

Practices" provision requires the IBT to give the Government prior notice of any constitutional changes contemplated either by the General Executive Board, between conventions, or by the delegates at the Convention. (A. 179.) The Government also conceded that the Convention delegates should be able to assemble, associate, vote, discuss and debate, however robustly, any matters properly before the Convention under the IBT's own rules for conventions; that they should be free to vote on the Consent Decree; and that they will be free to exercise to their fullest any rights they have under law. (A. 181.)

The foregoing notwithstanding, the District Court stated its view that it

could avoid potential difficulties at the Convention by dealing with the problem "right here and now, which gives everybody not only clarification, but gives them an opportunity to take the elevator up from here to the 17th floor . . . rather than wait possibly for a time when I may be constrained to grant a stay." (A. 185-187.)

3. The May 6, 1991 Hearing and the District Court Order.

On May 6, 1991, the district court convened a hearing for the purpose of informing the parties that it had issued an

opinion on the Government's motion.[3] From the bench the court stated:

> I have determined that as a result of decisions in the past two years, it has been settled that the IBT had the power to bind the entire union to the [C]onsent [D]ecree's changes in the IBT Constitution without a vote of the delegates to a convention. Therefore, the vote of the delegates on the [C]onsent [D]ecree to be taken at the 1991 convention will now have no legal effect.

(A. 111-112.) The court then issued a written Opinion & Order to that effect.[4] (A. 7-54.)

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3 The transcript of the May 6, 1991 hearing is reproduced at A. 108-127.

4 The May 6, 1991 Order is reproduced at A. 7-54.

Later during that same hearing, the Government asked the court to "clarify" its ruling to provide that "paragraph 17 of the [Consent] [D]ecree, like the entire [C]onsent [D]ecree, is a permanent amendment to the IBT Constitution" (A. 123.) and that "nothing in this opinion shall be construed to alter the provisions of the [C]onsent [D]ecree that requires the [C]onsent [D]ecree amendments to be put to the delegates for a vote." (A. 126.)

On May 7, 1991, the court entered a further Order amending its May 6, 1991 Opinion and Order in a manner consistent

with the Government's suggestions.[5] (A. 5-6.)

4. The Appeal to the Court of Appeals for the Second Circuit.

On May 14, 1991, the IBT filed a Notice of Appeal from the District Court Order with the clerk of the district court. The IBT then moved for an expedited determination of its appeal which the Second Circuit granted. The court of appeals heard argument on the IBT appeal on June 7, 1991 and entered judgment affirming

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[5] The May 7, 1991 Order is reproduced at A. 5-6.

the District Court Order later that afternoon.[6]

The IBT filed a Motion to recall the mandate and to stay the District Court Order on June 12, 1991.

ARGUMENT

This case raises the issue of whether the Government may take permanent control of a labor union without ever allowing the membership, through its democratically

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6 The Order of the Court of Appeals for the Second Circuit is reproduced at A. 1-4.

elected delegates, to express its views, by vote, on the Government's control.

The District Court Order, affirmed below, effectively rules that the GEB granted control of the union to the government in perpetuity when the GEB entered into the Consent Decree. This follows because in the May 7 amendment the district court ruled that "Paragraph L.17, like the entire Consent Decree, is a permanent amendment to the IBT Constitution." (A. 5.)

Paragraph L.17 provides:

> The parties intend the provisions set forth herein to govern future IBT practices in those areas. To the extent the IBT wishes to make any changes, constitutional or otherwise, in those provisions, the IBT shall give

> prior written notice to the . . . [Government], through the undersigned. If the . . . [Government] then objects to the proposed changes as inconsistent with the terms and objectives of this . . . [Consent Decree], the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from the Court, or after the entry of judgment dismissing this action, from this Court or any other federal court of competent jurisdiction as to whether the proposed change is consistent with the terms and objectives set forth herein. (A. 101-102.)

This ruling regarding the effect of Paragraph L.17 of the Consent Decree grants the Government permanent control of the IBT.

As indicated above, on May 6, the district court ruled in its Opinion and Order "that the electoral and disciplinary provisions of the Consent Decree are a part of the IBT Constitution . . . regardless of

the vote of the delegates . . . unless . . . changed in accordance with ¶L.17 . . ." (A. 53) and that "the IBT is put on notice that it shall not take action to vote against the very Consent Decree which it signed." (A. 52.) Together these orders effectively disenfranchise the rank-and-file of the IBT and place the Government in control of the union. This conclusion results notwithstanding strong Congressional support for preserving a "maximum amount of independence and self-government [for international unions]", Wirtz v. Local 153, GBBA, 389 U.S. 463, 473 (1968), and the express provisions of the Consent Decree both requiring that the amendments to the IBT

Constitution contained therein be "presented to the delegates for a vote" and declaring that "nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate, or member, including the parties hereto." (A. 83.)

These provisions of the Consent Decree are consistent with the Congressional policy favoring maximum independence and self-government by labor unions. The freedom allowed unions to govern their affairs has been repeatedly recognized by the courts. Wirtz v. Local 153, GBBA, 389 U.S. 463, 473 (1968); Wirtz v. Hotel Employees Union, 391 U.S. 492, 497-498 (1968); Dolan v. Transport Workers Union,

746 F.2d 733, 739-740 (11th Cir. 1984). While the parties have entered into a Consent Decree, every effort should be made to interpret its provisions in accordance with this policy, whenever possible. Recognition of this policy is particularly appropriate in this case because the Government seeks to take virtual control over the governance of the IBT "in perpetuity." (Brief for Plaintiff-Appellee United States of America, p.7, ¶2, filed in the court below). The District Court Order, affirmed below, allows this result even though

- the express provisions of the Consent Decree require a vote (A. 63-64, 78-83, and 97);

- the delegates to the Convention were elected pursuant to procedures implemented and supervised by the Elections Officer (A. 66-97);

- the Consent Decree explicitly recognizes the membership's Landrum-Griffin free speech rights (A. 63-64; see also, U.S. Const., Amend. I, 29 U.S.C. §411(a)(1) and (2));

- Article III, Section 9(b) of the IBT Constitution requires that "Amendments to the Constitution . . . shall be adopted by a majority vote of the delegates . . ." (IBT Constitution, p.20); and

- paragraph 9(b) of the Consent Decree preserves the Government's right to seek "any appropriate action" if the IBT has not formally amended its Constitution to conform to the terms of the Consent Decree by the completion of the 1991 Convention (A. 63-64).

For the Government to be placed in this position of control without a vote of the

rank-and-file, through its delegates, turns the rational underlying the Government's case upside down. In its Complaint the Government alleged that the GEB was subject to the influence of organized crime and that the rights of the rank-and-file were restricted as a consequence thereof. By eviscerating the delegates' vote, the district court effectively ruled that the GEB had the power to extend broad rights "in perpetuity" to the Government without rank-and-file input. In other words, the GEB, which was the subject of the Government's concern, is permitted to restrict the rights of the rank-and-file, the very individuals whose rights the Government was seeking to expand.

Indeed, the expansion of the rights of union rank-and-file was a concern of Congress. It indicated in debates

> "a need to protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government . . . to keep the union leadership responsive to the membership. This theme is made explicit in the reports of the Labor Committees of both Houses of Congress. It is reflected in the discreet provisions . . . of the 'Bill of Rights' for union members."

Wirtz v. Hotel Employees Union, 391 U.S. 492, 497-498 (1968).

The District Court Order not only disenfranchises the rank-and-file of the IBT, but compels it to enter a permanent partnership with the Government. This follows because it requires "the Consent

Decree's amendments to be put to the Convention delegates for a vote" (A. 6), while simultaneously enjoining the IBT from taking any "action to vote against" the Consent Decree. (A. 52.) The cumulative effect of the District Court Order is (a) that the Consent Decree amendments be put to the delegates for vote, (b) that the IBT cannot vote against the Consent Decree amendments, and (c) that the delegates must vote in favor of the Consent Decree amendments.

CONCLUSION

If this Court does not grant certiorari and determine the issues raised herein before the IBT International Convention on June 24, 1991, not only will the Government have been permitted to usurp control of the IBT without input from the rank-and-file, but also it may forever lose its right to be heard on these issues. For if the delegates vote for the Consent Decree amendments at the Convention, as required by the District Court Order, the favorable vote will enable the Government to claim later that the issues are moot.